

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 - - - - -x
4 BENJAMIN CASE, ELIZABETH CATLIN,
5 JENNIFER KLEIN, and MARK KUSHNER,
6 Plaintiffs,

7 Index No. 14-cv-9148 (AT)

8 -against-

9 THE CITY OF NEW YORK, NEW YORK CITY
10 POLICE DEPARTMENT ("NYPD") CHIEF OF
11 DEPARTMENT JOSEPH ESPOSITO, NYPD
12 DEPUTY CHIEF BRIAN MCCARTHY, NYPD
13 LIEUTENANT DAVID GROHT, NYPD SERGEANT
14 LAWRENCE PAPOLA, SHIELD NO. 03646, NYPD
15 OFFICER BENJAMIN ALMONTE, SHIELD NO.
16 29182, NYPD OFFICER DANIEL CONFORTI,
17 SHIELD NO. 26403, NYPD OFFICER FIRST
18 NAME UNKNOWN ("FNU") DOWNES, SHIELD NO.
19 UNKNOWN, NYPD OFFICER DMITRY TVERDOKHLEB,
20 SHIELD NO. 27018, and NYPD OFFICER
21 MICHAEL MALDONADO, SHIELD 23573,
22 Defendants.

23 - - - - -x
24 100 Church Street
25 New York, New York

September 14, 2017
11:31 a.m.

18 EXAMINATION BEFORE TRIAL of CHIEF JOE
19 ESPOSITO, the DEFENDANT in the
20 above-entitled action, held at the above
21 time and place, taken before Garry J.
22 Torres, a Shorthand Reporter and Notary
23 Public of the State of New York, pursuant
24 to the Federal Rules of Civil Procedure,
25 and stipulations between Counsel.

Page 2

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2 **APPEARANCES:**

3 **GIDEON ORION OLIVER**

4 **Attorney for Plaintiffs**

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6 **JENNIFER KLEIN, and MARK**

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18 **BY: AMY ROBINSON, ESQ.**

19 **ALSO APPEARING:**

20 **DARA WEISS - CITY LAW DEPARTMENT**

21 **JONI FOSTER - NYPD**

22 **MICHAEL DECKER - GIDEON ORION**

23 **OLIVER LAW FIRM**

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STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED, by
and among counsel for the respective
parties hereto, that the filing, sealing
and certification of the within deposition
shall be and the same are hereby waived;

IT IS FURTHER STIPULATED AND AGREED
that all objections, except as to form of
the question, shall be reserved to the
time of the trial;

IT IS FURTHER STIPULATED AND AGREED
that the within deposition may be signed
before any Notary Public with the same
force and effect as if signed and sworn to
before the Court.

* * *

1 J. ESPOSITO

2 clarifying. You didn't review the 49
3 related to this incident to prepare for
4 the dep, did you?

5 A. I don't think so.

6 MR. OLIVER: I'm going to show
7 the witness what's been marked as
8 Plaintiff's 4. It's the 49. Please
9 review that. Let me know when you
10 have finished.

11 THE WITNESS: You want me to
12 review or you want me to read the
13 whole thing? And I mean if I read it,
14 you're going to be here all day.

15 MR. OLIVER: Well, it's totally
16 up to you. That's your call. I will
17 have follow-up questions.

18 THE WITNESS: All right.

19 MR. OLIVER: Have you reviewed
20 it?

21 THE WITNESS: I'm going to
22 review it.

23 MR. OLIVER: Okay.

24 A. Okay.

25 Q. Okay. You've reviewed that

1 J. ESPOSITO

2 Q. Have you reviewed your time
3 sheet for that day?

4 A. No.

5 Q. Did you make a time sheet for
6 that day?

7 A. Yes.

8 Q. Did you put any comments on the
9 time sheet?

10 A. I don't recall if I did
11 specifically but my practice would be,
12 yes. I would put a comment in the end
13 whether it would it be Occupy Wall Street
14 I would make some comment.

15 Q. Generally speaking, what were
16 the contents of the comments that you were
17 trying to make?

18 A. Well, you want to say why you
19 worked so many hours. If I recall
20 correctly, I came in around 4 or 5 in the
21 morning. I didn't go home until late that
22 evening. So I would put some comment.
23 Probably would have said regarding Occupy
24 Wall Street, the demonstration. It could
25 be as simple as that.

1 J. ESPOSITO
2 city are scheduled events. Something that
3 we have prior knowledge of. Unscheduled,
4 something generally refers to something
5 that pops up at the spur of the moment
6 that we don't know about.

7 Q. So an event can be considered a
8 scheduled event even if it's not a
9 formally permitted event as long as the
10 police department knows about it, right?

11 MS. ROBINSON: Objection. You
12 can answer.

13 A. Generally speaking, yeah. That
14 term may be used.

15 MR. OLIVER: And I don't have
16 the exhibit number in front of me but
17 I'm showing you the daily events sheet
18 Esposito 6.

19 Q. It lists -- I know it's redacted
20 but it lists a number of events. Like you
21 can see on the second page it lists a
22 number of Occupy Wall Street related
23 events. Do you know if those events were
24 considered scheduled or unscheduled
25 events?

1 J. ESPOSITO

2 A. Don't know.

3 Q. Fair enough. Regardless of
4 whether an event is considered scheduled
5 or unscheduled, the police department
6 looks for certain information in order to
7 plan for policing the event, right?

8 A. Sure.

9 Q. Like numbers of potential
10 participants?

11 A. Yes.

12 Q. What other information does the
13 police department look for in planning for
14 policing an event like the date of the
15 incident?

16 A. We try and get as much
17 information as possible from a lot of
18 different sources.

19 Q. So the information that's
20 particularly useful in putting together a
21 detail aside from numbers of potential
22 participants includes what?

23 A. What the intention of the folks
24 showing up for. What their intention is.

25 Q. Let's say their intention is to

1 J. ESPOSITO

2 Kushner.

3 A. So what's the question?

4 Q. Sitting here today, do you have
5 any personal knowledge based on your own
6 direct observation that you can remember
7 of Mr. Kushner's conduct prior to his
8 arrest?

9 A. Yeah, sure.

10 Q. Tell me what you know regarding
11 Mr. Kushner's conduct prior to his arrest.

12 A. He was blocking pedestrian
13 traffic and refused to comply with our
14 orders to disperse.

15 Q. Tell me what you observed with
16 respect to his blocking pedestrian traffic
17 and be as specific as you possibly can
18 please.

19 A. Well, if you look at the photo,
20 you can see he is with a group of people
21 that have gone from the building line to
22 the curb with some type of barriers that
23 clearly are preventing people from walking
24 on the streets. People who wanted to walk
25 on the streets were on the streets -- on

1 J. ESPOSITO

2 corner of Broadway and Exchange Place.

3 Does that refresh your recollection about
4 the location of this incident or does it
5 not?

6 A. No.

7 Q. So sitting here today you can't
8 tell me where you were when that photo was
9 taken? You want to see it again?

10 A. If the arrest location says
11 Broadway and Exchange --

12 Q. That's what someone else says.
13 I'm asking what you know in your brain?

14 A. Sitting here today, I don't
15 recall exactly where that was but
16 refreshing my memory with the arrest
17 report, if it says Broadway and Exchange
18 then it was Broadway and Exchange.

19 Q. So is this what you remember now
20 that it was provide and Exchange?

21 A. No, I don't remember it.

22 Q. Okay.

23 A. I'm looking at the documents and
24 listening to what you're saying and if
25 what you're saying is accurate then it was

1 J. ESPOSITO

2 them and again, the recorded
3 message -- the message that disorder
4 control gives would tell them to disperse
5 also.

6 Q. When you say the message
7 disorder control give would tell them to
8 disperse, do you remember someone giving
9 an order to disperses sitting here today?

10 A. Yes.

11 Q. What do you remember of the
12 contents of that order specifically?

13 A. Just someone giving the order,
14 bullhorn with generally speaking, the
15 orders that I read earlier in the do
16 document you showed me.

17 Q. Why did you yourself not use a
18 bullhorn to communicate the order that you
19 gave on the video?

20 A. Not what I normally do.

21 Q. Not your style you said?

22 A. Not my general practice.

23 Q. Not your general practice and
24 why not?

25 A. Someone else's job. I'm the

1 J. ESPOSITO

2 chief of department. It's not my job, I
3 don't think, to get on the bullhorn and
4 give orders.

5 Q. But you did give an order,
6 right?

7 A. Yeah.

8 Q. Why didn't you use a bullhorn to
9 give that order?

10 A. I just chose not to.

11 Q. Do you remember why you chose
12 not to?

13 A. No.

14 Q. When the other officer gave the
15 order or orders that you testified to how
16 much time elapsed between the first such
17 order that that officer gave and the order
18 that you gave that is depicted on that
19 video?

20 A. I don't recall.

21 Q. Can you estimate without asking
22 to you guess?

23 A. No.

24 Q. Did the officer who gave those
25 orders -- withdrawn.

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1 J. ESPOSITO

2 Did the officer who gave that
3 order or those orders do so at your
4 direction?

5 A. Don't recall. Most likely, yes.
6 I was on the scene. So in those types of
7 situations it would be me directing the
8 orders to be given.

9 Q. Do you know who the incident
10 commander was on the date of the incident?

11 A. Not too sure.

12 Q. When you watched the video, did
13 you see Chief Purtell on the video?

14 A. Don't recall seeing him.

15 Q. When you watched the video, did
16 you see Chief Gillotte on the video?

17 A. Don't recall seeing him.

18 Q. Let's say Chief Purtell was the
19 incident commander on paper. Okay?
20 Assume that for argument's sake. If you
21 were also at the same location where Chief
22 Purtell was who would be in charge?

23 A. He would still be the incident
24 commander.

25 Q. But your orders would supersede

1 J. ESPOSITO

2 what happened next as far as you remember?

3 A. After what?

4 Q. After the events that are
5 depicted on those 30 seconds or minute of
6 video that you watched what happened next?

7 A. I believe arrests were made.

8 Q. Do you remember anything about
9 those arrests sitting here today?

10 A. No.

11 Q. So what happened after those
12 arrests were made that you do remember
13 about that day?

14 A. I don't recall.

15 Q. Now, before the order to
16 disperse was given were there
17 any -- before the first order to disperse
18 was given, did the police take any steps
19 to permit demonstrators to remain in the
20 area taking up less space on the sidewalk?

21 A. Don't recall.

22 Q. Is it your understanding of the
23 department's policies regarding policing
24 demonstrators that the department had a
25 policy to try and allow demonstrators to

1 J. ESPOSITO

2 continue demonstrating in a particular
3 location cordoned off by barricades or
4 some other means so that they were not
5 blocking pedestrian or vehicular traffic
6 and could continue their demonstration at
7 the location?

8 MS. ROBINSON: Objection. You
9 can answer.

10 A. Yes.

11 Q. Did that happen at that
12 location?

13 A. I don't recall.

14 Q. Were there any orders that were
15 given at that location by you or anyone
16 else directing demonstrators to move to
17 another designated area located nearby?

18 A. I don't recall.

19 Q. So there were over 200 arrests
20 that day according to the 49 that you read
21 earlier, do you remember that?

22 A. Yes.

23 Q. According to NYPD paperwork,
24 arrests were processed at the mass arrest
25 processing center at 1 Police Plaza. Did

1 J. ESPOSITO

2 barricades along the sidewalk?

3 A. Yes.

4 Q. How did the people get through
5 the barricades to get into the street?

6 A. From behind the crowd or on this
7 side of the crowd. Both sides of the
8 crowd people would have to go into the
9 street around the barriers to continue on
10 their work because they couldn't stay on
11 the sidewalk.

12 Q. Were the barriers that you're
13 talking about looked together?

14 A. I still don't recall if I saw
15 barriers.

16 Q. But you're certain that you saw
17 people go around demonstrators into the
18 street?

19 A. Yes.

20 Q. Now, is a person having to go
21 around other people, whether they're
22 demonstrators or not, into the street, is
23 that enough of a blockage of traffic for
24 the people you're calling demonstrators to
25 be subject to arrest for disorderly

1 J. ESPOSITO

2 conduct?

3 A. If the demonstrators were
4 they're standing, they're conduct is
5 preventing a person from free access of
6 that sidewalk and forcing them for the
7 most part, to go into traffic or go into
8 the curb, in to the street, yeah, I think
9 that's enough.

10 Q. Is it enough if it's just one
11 person who's forced to do by
12 demonstrators?

13 A. I think legally I think you
14 could mistake a case for it. I don't know
15 if we would do that but I think that
16 fulfills the statute.

17 Q. You're familiar with the
18 disorderly conduct statute generally,
19 right?

20 A. Generally.

21 Q. You know there's one subdivision
22 that deals with the blockage of traffic,
23 right?

24 A. I believe so.

25 Q. There's one subdivision that

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1 J. ESPOSITO

2 A. I was attempting to.

3 Q. Do you know if you did?

4 A. Don't recall.

5 Q. Did you give any information
6 about that conduct that led up to that
7 person's arrest to any fellow officer
8 after you engaged in the conduct that we
9 just watched?

10 A. Specifically on this incident?

11 Q. Yes.

12 A. I don't recall. My general
13 conduct would have been to -- if I detain
14 someone I would hand that person off to an
15 officer and tell that officer why that
16 person was being arrested.

17 Q. Okay. Fair enough.

18 A. I don't know if that did that in
19 that case.

20 Q. Understood.

21 MR. OLIVER: I'm going to
22 continue playing from 16 seconds in.

23 (Whereupon, a video was played.)

24 MR. OLIVER: I'm pausing at 34
25 seconds in.

1 J. ESPOSITO

2 wouldn't be able to pick out of the list
3 which lawsuits were over NYPD policies at
4 demonstration, would you?

5 A. No.

6 Q. Some of the things that are
7 different about large-scale-arrest
8 processing as opposed to
9 non-large-scale-arrest processing let's
10 say, the Polaroids, right? Polaroid
11 photographs that get taken.

12 A. During the large scale?

13 Q. Right.

14 A. Yes.

15 Q. So Polaroid photographs with
16 mass arrest pedigree labels, right?

17 A. Yes.

18 Q. What's the point of that step in
19 the process?

20 A. Number of different things.
21 It's better control. So an officer can
22 readily identify and look, when you have a
23 mass arrest situation with a big crowd a
24 lot of confusion sometimes. To avoid some
25 of that confusion we'll take a picture of

CERTIFICATION

I, GARRY J. TORRES, a Notary Public
for and within the State of New York, do
hereby certify:

That the witness whose testimony as
herein set forth, was duly sworn by me;
and that the within transcript is a true
record of the testimony given by said
witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I am
in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 21st day of September,
2017.



GARRY J. TORRES

